IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 365 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NUSHIR AHMED MOHD. KADIR KHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 365 of 2004

MR HARSHADRAY A DAVE for Petitioner No. 1

MR VM PANCHOLI APP Respondent Nos. 1-4

MR NIGAM R SHUKLA for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 25/08/2004

ORAL JUDGEMENT

1. Leave to delete respondent No.5.

2. Rule. Mr. VM Pancholi, learned APP appears and waives service of notice of rule on behalf of respondent Nos.1 to 4.

3. By filing instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to place before this Court the actual status of the investigation carried out by the investigating agency i.e., Vapi Town Police station in respect of the FIR registered vide CR No.64 of 2004 with Vapi Town Police station and also prayed to direct respondent No.1 to withdraw the investigation from the local investigating agency and hand over the investigation of the said matter to higher and efficient investigating authority like Central Bureau of Investigation.

3. The petitioner is carrying on business in the name of "Vapi Transport" at Vapi and is residing there with his family. He has three sons. The eldest son is Omesh, second son is Abuzer and the youngest son is Abukashim. According to the petitioner he has no enmity with anybody. But from 17.2.2004 his life has become miserable as his son Abuzer is missing. It is the case of the petitioner that his son Abuzer went to his shop on 17.2.2004 at his routine time. He used to come for his lunch but on that day he being alone he did not come for lunch. Normally his son Abuzer used to return around 9.30 P.M. but on 17.2.2004 he did not return from the shop and therefore the petitioner's youngest son Abukashim rushed to the shop to find out his brother's whereabouts. Abukashim on returning stated that Abuzer is missing and his scooter was there. On receiving this information, his eldest son also rushed to the shop and found that the shutter of the shop was closed but not locked and the same thing was found at the cyber cafe. The petitioner also contended that his son Omesh also found on opening the shutter of the cyber cafe that Abuzer is missing and the office was ransacked.

4. It is averred that on 18.2.2004 in the morning at about 8 O' clock, a missed call from a phone bearing No.+9197711111 was received on the mobile phone bearing No.982851-70011 of the youngest son of the petitioner and at around 8.30 in the morning the petitioner also received a phone call at his residential phone bearing No.2422513. Having a caller identity facility in his telephone, the petitioner found the same number from which they received a missed call on his son's mobile phone. The petitioner on receiving the said phone call

heard a male person talking in Hindi and asking for the father of Abuzer. Being disturbed he handed over the phone to his neighbour Ajam Anij Khan with whom the person on the other end had a talk. At that time the said person said that he would talk in the evening as he had short time left. On asking for Abuzer he disconnected the phone. Thereupon the petitioner lodged a complaint being CR No.I-64 of 2004 with Vapi Town Police station for alleged commission of offence under sections 342, 365 and 384 of the Indian penal Code.

5. As per the averments made in the petition, the petitioner received telephone calls for extortion of money. The petitioner informed everything to respondent No.2 who is Police Inspector of Vapi Town Police station. It is averred that subsequently the petitioner succumbed to the demand of the said extorting party and he decided to pay a sum of Rs.3,00,000/- to the said extorting party who introduced himself as Bunty Pandey. The petitioner sent the money as demanded to Dubai through his friend's relative on 24.2.2004. It is contended that the petitioner thought that he will get his son back and phone calls were stopped for some time but again around 27th or 28th of February 2004 the phone calls demanding money started. At that time said Bunty Pandey made petitioner hear the voice of his son through a tape recorder and asked for money for the last time and he promised to the petitioner that he will release his son on receipt of the said money. Again on 4.3.2004 the petitioner again sent money amounting to Rs.2,00,000/- to said Bunty Pandey. He received a phone call that the money is received and a phone number (0063983410027) was given to the petitioner to know about his son. The petitioner tried for many times on the given number but he could not succeed. At last he could talk on the given number and on the other end he found some lady talking to him. The petitioner asked for Bunty and after that he received a phone call from Bunty and he said that petitioner's son is at Kankariya area of Ahmedabad in one hotel. The petitioner immediately rushed to Ahmedabad and searched for his son but in vain. The petitioner contended that after this the phone calls stopped but suddenly on 26.3.2004 again he started receiving phone calls asking for money against his son. The same were received for two three times by the petitioner and now again the phone calls are stopped. The petitioner has informed every thing that has transpired to the local police. He has supplied to the police the number from which the demand was made and the number on which he was to call back. He also has informed the police that he is suspecting one person named Eyaz who was with his missing

son for some days prior to the wrongful confinement of his son. He has also given three numbers and requested the police to check out the outgoing and incoming calls on the said numbers as the petitioner is also suspecting the persons holding the said numbers. The numbers given to the police to be traced are (i) 05460-246111, (ii) 05460-246342 and (iii) 05460-246007. Even after two months of lodging the complaint before the police, who has to maintain law and order of the society and to investigate for the commission of serious and heinous crimes in the society and to safeguard citizens and individuals, nothing has come out and the petitioner is at present at the same place as he was at the time of lodging the said complaint. The petitioner therefore filed instant petition for the reliefs to which reference is made earlier.

6. The petition is contested by respondent - State of Gujarat by filing affidavit in reply sworn by K.G. Erda, Police Inspector, Valsad, LCB Police station wherein it is inter alia stated about the efforts made by them to find out the miscreants and also stated that still the efforts to find out the miscreants are going on and lastly it is stated that the investigating agency has not left any stone unturned in tracing out the whereabouts and has taken the police services of international level i.e., CBI and Interpol and therefore there is no question of any lapse on the part of the investigating agency. Therefore, it is prayed to dismissed the petition with cost.

7. A further affidavit in reply is filed which is sworn by K.G. Erda, Police Inspector, Valsad LCB Police station wherein he has highlighted further efforts made by them to trace out the kidnapped son of the petitioner.

8. I have heard Mr. Harshadray A.Dave, learned advocate of the petitioner and Mr.VM Pancholi, learned APP for respondent No.1 - state and other police officers. I have gone through the averments made in the petition and I have also perused the impugned complaint, affidavits filed by the Police Inspector, Valsad LCB Police station and the annexures to the petition.

9. So far as the averments made in the petition are concerned, there is no reason to disbelieve the same. Similarly, there is also no reason to disbelieve the efforts made by the police officers in trying to find out the kidnapped son of the petitioner and to trace out the miscreants which facts have been stated on oath in the reply affidavits. However, the fact remains that the

kidnapped son of the petitioner is not yet traced out nor any miscreant is found out till today by the investigating agency.

10. The plight of the father and family members of the kidnapped boy, in these circumstances, can be very well be understood. On reading the averments made in the reply affidavits, it is seen that intensive efforts have been made by the investigating agency to find out the kidnapped boy. However, considering the plight of the father and family members of kidnapped boy, without casting any aspersion or stigma on the present investigating agency i.e., LCB, it is desirable and also it is in the interest of justice to transfer the investigation of the said case to higher authority i.e., State CID Crime, Gandhinagar which is a specialized Branch to detect such type of crimes.

11. In aforesaid view of the matter, this petition deserves to be allowed by granting the prayer made therein.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. On the facts and in the circumstances of the case, it is directed that State CID Crime, Gandhinagar shall forthwith take charge of the FIR registered vide CR No.64/2004 with Vapi Town police station including whatever material the local investigating agency has collected during the investigation made by them so far and start investigation promptly. It is also directed that the local investigating agency i.e., Vapi Town Police station shall hand over the charge of investigation in respect of the FIR registered with it vide CR No.64/2004 together with whatever material they have collected so far to the State CID Crime, Gandhinagar.

13. Registrar of this Court is directed to send a copy of this judgment forthwith to the State CID Crime, Gandhinagar as well as to Vapi Town police station where the FIR vide CR No.64/2004 is lodged so as to enable them to comply with the directions given in this judgment.

Rule is made absolute accordingly.

(A.M. Kapadia, J.)

(karan)